IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 18535 of 2004(F)

PETITIONER:

JACOB CHACKO,
DEPUTY SUPERINTENDENT OF POLICE (MOTOR TRANSPORT),
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

BY ADV. SRI.DEEPU THANKAN
SRI.K.A.BALAN

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. **DIRECTOR GENERAL OF POLICE,**
   POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

3. **DEPARTMENTAL PROMOTIONO COMMITTEE(LOWER)**
   POLICE DEPARTMENT, REPRESENTED BY ITS CONVENOR,
   THE DIRECTOR GENERAL OF POLICE,POLICE HEADQUARTERS
   THIRUVANANTHAPURAM.

4. **M.SIVADASAN,**
   DEPUTY SUPERINTENDENT OF POLICE (MOTOR TRANSPORT),
   OFFICE OF THE INSPECTOR GENERAL OF POLICE,
   SOUTH ZONE, THIRUVANANTHAPURAM.

BY ADV. SRI.K.K.JOHN for R4
BY GOVERNMENT PLEADER SMT. T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.18535/2004 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.L5/63799/92 DTD. 6/02/1998 OF THE INSPECTOR GENERAL OF POLICE (ADMINISTRATION), POLICE HEADQUARTERS,THIRUVANANTHAPURAM.**

EXT.P1(A): **COPY OF THE RELEVANT EXTRACT OF THE APPENDED SENIORITY LIST OF MOTOR TRANSPORT SUB INSPECTORS AS ON 1/1/1994.**

EXT.P2: **COPY OF THE NOTIFICATION NO.CONFDL.IV/62389/86 DTD. 24/11/1986 OF THE CONVENER, DEPARTMENTAL PROMOTION COMMITTEE (LOWER).**

EXT.P3: **COPY OF THE NOTIFICATION NO.CONFDL.IV/116282/89 DTD. 18/06/1990 OF THE DIRECTOR GENERAL OF POLICE (CONVENER), DEPARTMENTAL PROMOTION COMMITTEE).**

EXT.P4: **COPY OF THE NOTIFICATION NO.CONFDL.4/34480/95 DT.D. 18/05/1995 OF THE DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE, (CONVENER) DPC LOWER).**

EXT.P5: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR GENERAL OF POLICE DTD. 15/09/1995.**

EXT.P6: **COPY OF THE JUDGMENT IN O.P.2616/2002-J OF THIS HON'BLE COURT.**

EXT.P7: **COPY OF THE LETTER NO.CONFDL.4/11022/2002 DTD. 15/05/2002 OF THE DIRECTOR GENERAL OF POLICE.**

EXT.P8: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DTD. 24/11/2003.**

EXT.P9; **COPY OF THE JUDGMENT IN O.P.16440/2002F DTD. 18/12/2003 OF THIS HON'BLE COURT.**

EXT.P10: **COPY OF THE G.O.(RT) NO.1044/2004/HOME DTD. 7/05/2004.**

EXT.P11: **COPY OF THE LETTER NO.T4/11022/2002 DTD. 7/06/2004 OF THE 2ND RESPONDENT.**

EXT.P12: **COPY OF THE ORDER DTD. 18/09/2004.**

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.18535 OF 2004-F

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Dated this the 14th day of June, 2007.

JUDGMENT

Petitioner and the 4th respondent joined the service as Motor Transport Sub Inspectors. The petitioner was senior to the 4th respondent in that category. He was provisionally promoted as Motor Vehicle Inspector and in 1983, following a select list, the petitioner had to come back as Motor Transport Sub Inspector to give room for those included in the select list for being promoted as Motor Transport Inspectors on regular basis. Thereafter, Ext.P3 select list was prepared by the DPC on 7-5-1990 which, according to the petitioner, was for the vacancies that were to be anticipated for the year 1989, which means that the concept of anticipation became oblivious because, the DPC was, in May 1990 making selection for the vacancy that had already arisen. In doing so, the DPC prepared a select list which

included the 4th respondent. It is pointed out by the learned counsel for the petitioner that the petitioner had no notice of that select list (Ext.P3) and to his surprise, he noticed it when he was tagged behind the 4th respondent. When Ext.P4 select list was made in the year 1994, such tagging of the petitioner behind the 4th respondent being only on the story made for Ext.P3 select list in terms of Rule 28(b)(i)(9) was remained in force until it is revised and the names of those officers who are included in the earlier rank list shall be ranked above a person considered for a subsequent list, except for the reasons stated in that sub-rule. According to the petitioner, the placement of the 4th respondent in Ext.P3 was wholly unnecessary because, there was only one vacancy that was to be dealt with by the DPC for the year 1989 and the DPC had found Sri.V.M.Raphel as entitled to be included in that list. So much so, the petitioner contends that the inclusion of the 4th respondent in Ext.P3 list dated 7-5-1990 was illegal, unauthorised and contrary to the statutory provisions and such situations cannot be utilised by him to steer a march over the petitioner while Ext.P4 select list was made in 1994.

2. As of now, the 4th respondent has retired from service. The petitioner has about an year more of service. Both of them, with the passage of time, had been promoted to higher ranks and the petitioner is, as of now, a Deputy Superintendent of Police and it is stated that his next promotion is also due. Therefore, the relevance of the adjudication of this writ petition would only be for considering the question whether the petitioner was entitled to be placed immediately above the 4th respondent who, as of now, is his immediate senior, going by Ext.P4 select list and whether as a consequence, any monetary benefit is to accrue to the petitioner. It is not pointed out that the further avenues of promotion would depend on such placement. It cannot be, because, the 4th respondent has already retired.

3. By considering the question whether the discretionary jurisdiction of this Court under Article 226 of the Constitution of India should be extended to the petitioner, it needs to be examined as to whether justice in the situation in hand requires the exercise of such power. This calls for taking stock of the entire facts and circumstances of the case.

4. Technically, it may be right if the petitioner points out that there should have been a review DPC as far as Ext.P3 select list is concerned, if it were his case that he was not considered at all. But then, he had been building up his case before the Government or in this writ petition footing much on the legality of ignoring him from the field of choice from preparing Ext.P3 list. The foundation of his case is only that the 4th respondent had been illegally tagged in Ext.P3 list without the requirement of such identification, vis-a-vis, the total number of vacancies available for promotion. Reference is made by the petitioner in this regard to Rule 28(b)(i)(4)(a) of the General Rules, which states that select lists shall be prepared during a calendar year for the vacancies estimated to arise in the next calendar year. Admittedly, a select list was prepared for the vacancy that occurred in the previous year. That is how the sequence of events has taken place, going by the date of the DPC meeting and the publication of Ext.P3 list. But, as discernible from the impugned Ext.P10 Government Order, the DPC held on 7-5-1990 prepared a select list of two Motor Transport Sub Inspectors for promotion as Motor

Transport Inspectors because, Sri.V.M.Raphel referred to above was conditionally included in the earlier select list and was cleared for inclusion in the select list while preparing the 1989 select list. Therefore, it would not have been in the interest of the administration to make a select list depending upon a person whose clearance could be a matter for further review. Whatever that be, a reading of Rule 28(b)(i)(4)(a) does not take away the authority of a DPC in the process of estimating the total number of vacancies, to include, may be, one more person. I say so because, in a given situation, the administration should have the freedom to make such a selection in anticipation of various administrative incidents that may occur, but those questions need not be considered to be of much relevance to decide this case at this point of time. This is because, even while Ext.P10 was issued on 7-5-2004, the Government have enumerated 13 instances of what they call as punishments imposed on the petitioner. This includes that the petitioner was reprimanded, once for dereliction of duty, postponement of increment for two years without cumulative effect, censure, barring of increment for six months without cumulative effect, etc. Is this Court to come to the aid

of a Government servant, who has faced repeated censure orders in a uniform service? In my view, not, at least on the facts and circumstances of the case in hand, particularly, because, even if the petitioner is to succeed, that will only result in re-fixing the payments that have to be made out of public funds.

5. Having regard to the aforesaid facts and circumstances, I find no grounds to issue any writ, direction or order in favour of the petitioner.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-